



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/172448

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**PRELIMINARY RECITALS**

Pursuant to a petition filed March 03, 2016, under Wis. Admin. Code § DHS 10.55, to review a decision by the Eau Claire County Department of Human Services in regard to Medical Assistance, a hearing was held on March 22, 2016, at Eau Claire, Wisconsin.

The issue for determination is whether a German pension the petitioner is eligible for but stopped receiving counts as available income when determining her share of her medical costs.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Eau Claire County Department of Human Services  
721 Oxford Avenue  
PO Box 840  
Eau Claire, WI 54702-0840

**ADMINISTRATIVE LAW JUDGE:**

Michael D. O'Brien  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Eau Claire County.

2. The petitioner has advanced dementia. He cannot properly handle his own financial affairs but has no guardian or power of attorney to assist him.
3. The petitioner received a \$273.73 monthly German pension until October 2015. He lacks the mental capacity to find and prepare the paperwork necessary to get the pension reinstated.
4. The petitioner has recently moved several times. His wife's family cannot find any of the paperwork needed to reinstate his German pension. (He has no family of his own to help him.)

### **DISCUSSION**

The petitioner receives medical assistance through one of the MA-Waivers program. Those receiving these benefits must contribute all income exceeding allowable deductions to their medical care. Wis. Admin. Code, § DHS 103.07(1)(d); *Medicaid Eligibility Handbook*, 28.5.1. When determining income, workers count only income that is "available." Wis. Admin. Code, § DHS 103.07(1)(d); *Medicaid Eligibility Handbook*, § 15.1.5. Income is available if all of the following are true:

1. It is actually available.
2. The person has a legal interest in it.
3. The person has the legal ability to make it available for support and maintenance.

*Medicaid Eligibility Handbook*, § 15.1.5.

The sole issue is whether a small German pension the petitioner stopped receiving in October 2015 is available income that counts when determining his contribution toward his medical care. He stopped receiving the pension because he has advanced dementia and can no longer fill out the necessary paperwork. He has no guardian or power of attorney. His wife's family does help with some things, but he has recently moved several times and they cannot find any relevant paperwork for the pension. Although I am reluctant to ignore a pension he retains a legal interest in and has the legal right to make available, his circumstances prevent it from being *actually* available now, and I see no practical way this can change. Therefore, the county agency cannot count it when determining his share of his medical costs.

### **CONCLUSIONS OF LAW**

1. The preponderance of the evidence is that the German pension the petitioner is eligible for but does not receive is not available income because his medical condition and circumstances prevent him from reinstating it.
2. The petitioner's German pension cannot be considered when determining her share of her medical costs.

**THEREFORE, it is**

### **ORDERED**

That this matter is remanded to the county agency with instructions that within 10 days of the date of this decision it redetermine his contribution to his medical costs. When doing so, it shall not consider the German pension he is eligible for but does not receive to be available income.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

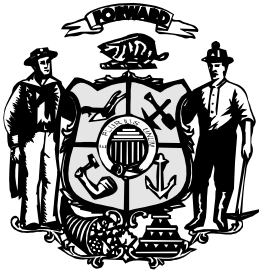
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 24th day of March, 2016

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\sMichael D. O'Brien  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 24, 2016.

Eau Claire County Department of Human Services  
Office of Family Care Expansion  
Health Care Access and Accountability